

1 RICHARD C. EYMANN
2 Eymann Allison Hunter Jones P.S.
3 2208 West Second Avenue
4 Spokane, WA 99201-5417
5 (509) 747-0101
6 (509) 458-5977 (facsimile)
7 eymann@eahjlaw.com

8 Attorneys for Plaintiffs

9 **UNITED STATES DISTRICT COURT FOR THE**
10 **EASTERN DISTRICT OF WASHINGTON**

11 CHARLES WALTER LARKIN III,
12 Personal Representative of the ESTATE
13 OF STEPHANIE NICOLE LARKIN;
14 and SIDNEY P. OTTEM, as Guardian
15 Ad Litem for Z.G., minor child of
16 STEPHANIE NICOLE LARKIN; and
17 CHARLES LARKIN III and EVA
18 LARKIN, husband and wife and parents
19 of STEPHANIE NICOLE LARKIN,
20 Plaintiffs,

21 v.

22 COMMUNITY HEALTH SYSTEMS,
23 INC., a Delaware corporation, d/b/a
24 CHSPSC, LLC, a Delaware corporation,
25 d/b/a Yakima HMA, LLC, d/b/a Yakima
26 Regional Medical and Cardiac Center,

Defendants.

NO. _____

**COMPLAINT FOR
MEDICAL NEGLIGENCE
AND WRONGFUL
DEATH**

JURY TRIAL

COME NOW the plaintiffs, and for causes of action against the defendants,
allege as follows:

I. JURISDICTION AND VENUE

1.1 Plaintiffs allege an amount in controversy in excess of \$75,000.00, exclusive of interest and costs.

1.2 This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332.

1.3 There is complete diversity of citizenship between plaintiffs and defendants.

1.4 Venue is proper in the United States District Court for the Eastern District of Washington under 28 U.S.C. § 1391(b)(2). All acts of medical negligence set forth in this Complaint occurred in Yakima County, Washington. The Plaintiffs reside in Yakima County, Washington.

II. I. PARTIES

1.1 Plaintiff CHARLES WALTER LARKIN III, is the duly appointed Personal Representative of the ESTATE OF STEPHANIE NICOLE LARKIN, having been appointed on February 15, 2018 by Order of the Yakima County Superior Court, Cause No. 18-4-000753-9. Plaintiff Charles Larkin, at all times material hereto, was and is a resident of Yakima County, Washington. Plaintiff Charles Larkin brings this action under RCW 4.20, *et seq.*, on behalf of the Estate of Stephanie Nicole Larkin and all lawfully entitled beneficiaries.

1.2 Attorney SIDNEY P. OTTEM was appointed Guardian Ad Litem for Minor Child Z.G. on October 10, 2018. Z.G. is the biological son of Stephanie Nicole Larkin, deceased, and a resident of Yakima County.

1.3 CHARLES LARKIN and EVA LARKIN, husband and wife, are the parents of Stephanie Nicole Larkin, deceased, and were present during the hospitalization that is the subject of this lawsuit.

1 1.4 Defendant COMMUNITY HEALTH SYSTEMS, INC. (hereafter
2 “CHSI” or “Community Health Systems, Inc.”), is a Delaware corporation, with
3 its principal place of business in Franklin, Tennessee. CHSI was doing business
4 as CHSPSC, LLC, a Delaware corporation. During all times relevant to the facts
5 alleged in this Complaint, CHSI was doing business as Yakima HMA, LLC, d/b/a
6 Yakima Regional Medical and Cardiac Center.

7 1.5 On information and belief, physicians, resident physicians, physicians
8 with fellowships, hospitalists, nurses and other medical staff who treated or
9 otherwise provide medical services to Stephanie Nicole Larkin at CHSI/Yakima
10 Regional in January of 2017, including but not limited to Mark Silverstein, M.D.
11 and San Kaung, M.D., were employees and/or agents of defendant CHSI/Yakima
12 Regional.

13 1.6 Defendants collectively are referred to in this Complaint as
14 “CHSI/Yakima Regional.”
15

16 **III. WAIVER OF PHYSICIAN PATIENT PRIVILEGE**

17 3.1 Plaintiff Charles Walter Larkin III, asserts the physician/patient
18 privilege for 88 days following the filing of this Complaint. On the 89th day
19 following the filing of this Complaint, the respective plaintiffs hereby waive their
20 physician/patient privilege. That waiver is conditioned and limited as follows:

21 (1) The plaintiffs do not waive the constitutional right of privacy; (2)
22 The plaintiffs to not authorize contact with either their own or the deceased’s health
23 care providers of any kind except by judicial proceeding authorized by the Rules
24 of Civil Procedure; (3) Representatives of the defendants, including those
25 connected in any manner to insurance companies, are specifically instructed not to
26 attempt ex-parte contacts with their own health care providers or the health care

1 providers of the deceased plaintiff; and, (4) Representatives of the defendants are
 2 specifically instructed not to write letters to either their own or the deceased
 3 plaintiff's health care providers telling them that they may mail copies of records
 4 to the defendants.

5 In the case of *Loudon v. Mhyre*, 110 Wn.2d 675, 756 P.2d 138 (1988),
 6 the Supreme Court dealt very simply with the issue of ex-parte contact with the
 7 plaintiff's physicians:

8 The issue presented is whether defense counsel in a personal
 9 injury action may communicate ex parte with the plaintiff's
 10 treating physicians when the plaintiff has waived the
 physician/patient privilege. We hold that defense counsel may
 not engage in ex-parte contact, but is limited to the formal
 discovery methods provided by court rule.

11 *Loudon*, at 675-676.

12 IV. FACTS

13 4.1 On information and belief from various
 14 sources, including medical records, the following
 15 facts are alleged:

16 4.2 On January 1, 2017, 29-year-old
 17 Stephanie Nicole Larkin, a single mother of 6-year-
 18 old Z.G., was hospitalized at CHSI/Yakima Regional
 19 for a tailbone cyst abscess and general weakness. On
 20 admission, she was known to have a history of lupus
 21 erythematosus, an auto-immune disease, which can be effectively treated and most
 22 people with the disease can lead active healthy lives with normal life expectancy. It
 23 is typically treated by rheumatologist physicians.

24 4.3 During the hospitalization, the abscess essentially healed, but
 25 Stephanie's condition steadily deteriorated while hospitalized over a 19-day
 26 period.



4.4 Some physicians and nurses made recommendations to transfer Stephanie to a different facility with a higher level of care, including inpatient rheumatology services. There were repeated family requests for such transfer. However, CHSI/Yakima Regional wrongfully kept Stephanie at its facility.

4.5 On January 19, 2017, CHSI/Yakima Regional finally approved transfer of Stephanie to Deaconess Medical Center in Spokane, Washington when she was near death.

4.6 Despite heroic efforts by Deaconess staff and physicians, Stephanie Larkin's condition was such that she did not recover and died on January 20, 2017 at the young age of 29 years.

4.7 Community Health Systems, Inc., d/b/a CHSPSC, LLC provides hospital management, consulting, and advisory services to community hospitals and health systems. CHSI has faced criminal charges and civil claims relating to criminal fraud for overbilling and overcharging and filing misleading financial reports. CHSI has also faced whistleblower lawsuits alleging unnecessary admissions and/or prolonged admissions to its hospitals all the while understaffing, thus putting profits ahead of patient care and jeopardizing patient health. It is the kind of very conduct that was a cause of Stephanie Larkin's iatrogenic below standard care and outrageously negligent treatment, and ultimately a cause of her tragic death.

CAUSES OF ACTION

V. NEGLIGENCE AND PROXIMATE CAUSE

5.1 Plaintiffs hereby reincorporate each and every allegation contained in paragraphs 1.1 through 4.5 above.

1 5.2 Plaintiffs sustained injuries and damages due to the independent
2 negligence of CHSI/Yakima Regional and/or its respective professional employee
3 physicians, hospitalists, nurses, pharmacists, delegates, agents, administrators,
4 staff, representatives and/or employees, including but not limited to Mark
5 Silverstein, M.D. and San Kaung, M.D., for whom CHSI/Yakima Regional is
6 vicariously liable. These persons failed to exercise the degree of care, skill and
7 learning expected of a reasonably prudent health care provider in the state of
8 Washington, acting in the same or similar circumstances, in providing negligent
9 care, failure to provide a proper hospital environment, failure to communicate, and
10 failure to timely transfer to a qualified medical facility.

11 5.3 Plaintiffs' injuries and damages were and are due to the negligence of
12 CHSI/Yakima Regional in providing medical care, medical treatment and
13 medication, and also in monitoring and controlling the competence and practice of
14 physicians and/or pharmacists using their facilities and/or in failing to properly
15 train, supervise, review and monitor their professional employee physicians,
16 nurses, pharmacists, staff, employees, administrators and/or other persons over
17 whom they exercised control.

18 5.4 CHSI/Yakima Regional's professional employee physicians,
19 hospitalists, nurses, pharmacists, delegates, agents, administrators, staff,
20 representatives and/or employees further failed to exercise the degree of care, skill,
21 and learning expected of a reasonably prudent health care provider in the state of
22 Washington, acting in the same or similar circumstances, at the time of Stephanie's
23 treatment.

24 5.5 Further, there was a failure to communicate among CHSI/Yakima
25 Regional's professional employee physicians, nurses, pharmacists, hospitalists,
26 agents, administrators, staff, representatives, employees, systems management,

1 and consulting physicians about Stephanie Larkin's increasingly critical condition
2 and her need for immediate transfer to a medical facility equipped to treat her
3 medical condition many days before being transferred.

4 5.6 CHSI/Yakima Regional further failed to exercise the degree of care,
5 skill and learning expected of a reasonably prudent health care provider in the state
6 of Washington, acting in the same or similar circumstances, in connection with
7 training, credentialing, supervising and/or monitoring of their professional
8 employee physicians, nurses, pharmacists, delegates, agents, administrators, staff,
9 representatives and/or employees and in failing to adopt or enforce customs,
10 policies, or procedures or otherwise failing to act to protect patient Stephanie
11 Larkin from negligent acts by said individuals.

12 5.7 CHSI/Yakima Regional further failed to provide a proper hospital
13 environment and staffing during Stephanie Larkin's admission, necessitating
14 Stephanie's family to provide her food, necessities, and perform nursing duties,
15 including bathing and other hygiene tasks.

16 5.8 CHSI/Yakima Regional committed other acts of corporate negligence
17 as may be proven at the time of trial.

18 5.9 The failures and negligent acts of CHSI/Yakima Regional were a
19 proximate cause of Stephanie Larkin's untimely death and plaintiffs' injuries and
20 damages.

21 22 **VI. TORT OF OUTRAGE**

23 6.1 Plaintiffs hereby reincorporate paragraph 1.1 to 5.9 as if fully set forth
24 herein.
25
26

1 6.2 Defendant CHSI/Yakima Regional engaged in extreme and
2 outrageous conduct amounting to intentional or reckless infliction of severe
3 emotional distress.

4 6.3 As a direct and proximate result of Defendant CHSI/Yakima
5 Regional's employees' verbal pronouncements, errors and/or omissions, Stephanie
6 Larkin experienced the physical and mental horror of being told by hospital staff
7 with witnesses present that she was going to die unless she was transferred to a
8 different hospital knowing that if she died, her six-year-old son would be
9 significantly adversely affected. Plaintiffs Z.G., Charles and Eva Larkin suffered
10 damages, and will continue to suffer in the future, emotional distress and
11 consortium losses in this regard as each were present during most of the chronic
12 outrageous conduct.

13 14 **VII. INFORMED CONSENT**

15 7.1 Plaintiffs hereby reincorporate each and every allegation contained in
16 paragraphs 1.1 through 6.3.

17 7.2 Defendants, and each of them, failed to inform Stephanie Larkin of a
18 material fact or facts relating to her care and treatment specifically, but not limited
19 to, the fact that defendant hospital was ill equipped to care or treat her lupus disease
20 and its sequelae.

21 7.3 Stephanie Larkin and/or her parents consented to the care and
22 treatment of Stephanie without being made aware of or fully informed regarding
23 material facts.

24 7.4 The care and treatment or lack thereof that defendants provided or
25 failed to provide to Stephanie was a proximate cause of her untimely death.
26

VIII. INFERENCE OF NEGLIGENCE

8.1 Plaintiffs hereby reincorporate each and every allegation contained in paragraphs 1.1 through 7.4.

8.2 The manner of death of Stephanie and attending circumstances are of such character as would warrant an inference that the death would not have occurred if the requisite standard of care had been exercised by the defendants, and each of them.

8.3 The medical care and treatment which ultimately resulted in the untimely death of Stephanie was, at all material times, under the control of the defendants, and each of them.

8.4 Stephanie Larkin would not have died had the defendants exercised the requisite standard of care.

IX. DAMAGES

9.1 Plaintiffs hereby reincorporate each and every allegation contained in paragraphs 1.1 through 8.4.

9.2 As a direct and proximate result of the defendants' aforesaid negligence and outrageous conduct, Stephanie Larkin's life was wrongfully ended on January 20, 2017 when she was just 29 years old and mother of a 6-year-old son causing injuries and damages to plaintiffs as described herein.

9.3 As a direct and proximate result of the defendants' negligence and outrageous conduct, the Estate of Stephanie Larkin sustained general and special damages including, but not limited to, past medical expenses, funeral and burial expenses, out-of-pocket expenses, future earnings and/or earning capacity, pre-death pain and suffering, and fear of impending death, all in an amount as the trier

1 of fact may find as reasonable and just under the facts and circumstances of the
2 case.

3 9.4 As a further direct and proximate result of the defendants' negligence
4 and outrageous conduct and the resulting untimely death of Stephanie, the minor
5 son has sustained, and will continue to sustain in the future, the loss of the child-
6 parent relationship, and the loss of the love, affection, guidance, services and
7 support of his deceased mother, along with other special and general damages, all
8 in an amount as the trier of fact may find as reasonable and just under the facts and
9 circumstances of the case.

10
11 **X. DEMAND FOR JURY**

12 10.1 Plaintiffs demand a jury trial in this action.

13
14 **PRAYER**

15 WHEREFORE, plaintiffs pray for judgment against the defendants, jointly
16 and severally, as follows:

17 1. For plaintiffs' general and other damages, all in amounts to be
18 determined at the time of trial;

19 2. For the Estate of Stephanie Larkin's special and general damages,
20 including but not limited to, past medical expenses, funeral and burial expenses,
21 out-of-pocket expenses, pre-death pain and suffering, fear of impending death, lost
22 earning capacity and future wage loss, and such other damages, all in amounts to
23 be proven at the time of trial;

24 3. For judgment against defendants to fully compensate plaintiff minor
25 son for the loss of the parent-child relationship, and the loss of the love, affection,
26

1 care, services, companionship, guidance and support of his deceased mother, in an
2 amount to be proven at the time of trial;

3 4. For costs and disbursements incurred herein;

4 5. For prejudgment interest;

5 6. For attorneys' fees; and

6 7. For such other and further relief as the Court may deem just and
7 equitable.

8 DATED this 10 day of January, 2019.

9 **EYMANN ALLISON HUNTER JONES P.S.**

10
11 By: 

12 RICHARD C. EYMANN, WSBA #7470
13 2208 West Second Avenue
14 Spokane, WA 99201
15 (509) 747-0101

16 ***Attorneys for Plaintiffs***